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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SHERMAN GOTTlieb,	:	04-CV-4202 (ILG) (VVP)
	:	
Plaintiff,	:	
	:	<u>[PROPOSED] JOINT PRE-TRIAL ORDER</u>
-against-	:	
	:	
CARNIVAL CORPORATION,	:	
	:	
Defendant.	:	
-----	X	

Plaintiff Sherman Gottlieb ("Mr. Gottlieb") and Defendant Carnival Corporation ("Carnival") respectfully submit this Joint Pretrial Order pursuant to the Court's Civil Pretrial Order, dated November 3, 2009 (Docket No. 70).

I. Statement of Stipulated Facts

Pursuant to a stipulation dated July 2, 2009, the parties have agreed that "for all purposes related to any determination of liability" under the [TCPA] the number of faxes for which the statutory penalty of \$500 (without regard to the parties' positions on trebling) may be awarded to plaintiff shall be fixed at 750." Pursuant to the same stipulation, the parties have agreed that "for

all purposes related to any determination of liability under N.Y. Gen. Bus. Law § 396-aa, the number of faxes meeting the date and time requirements of § 396-aa and for which the statutory penalty may be awarded to plaintiff shall be fixed at 225.”

II. Schedules of Exhibits

Plaintiff's Trial Exhibits:

Exhibit No.	Bates No.	Description
PX 1		Stipulation, dated July 2, 2009
PX 2	CARN 000001	
PX 3	CARN 000002	
PX 4	CARN 000003	
PX 5	INTENTIONALLY LEFT BLANK	INTENTIONALLY LEFT BLANK
PX 6	CARN 000008-9	
PX 7	CARN 000010	
PX 8	CARN 000011	
PX 9	CARN 000012-17	
PX 10	CARN 000018-23	
PX 11	CARN 000024-28	
PX 12	CARN 000029	
PX 13	CARN 000030	
PX 14	CARN 000031	
PX 15	CARN 000032	
PX 16	CARN 000033	
PX 17	CARN 000034-38	
PX 18		Defendant's Objections and Responses to Plaintiff Sherman Gottlieb's First Set of Interrogatories, dated

Exhibit No.	Bates No.	Description
		12/19/06
PX 19		Defendant's Objections and Responses to Plaintiff's First Set of Requests for the Production of Documents, dated 12/18/06
PX 20	SMG 0971	
PX 21	SMG 1209-1210	
PX22	INTENTIONALLY LEFT BLANK	INTENTIONALLY LEFT BLANK
PX23	INTENTIONALLY LEFT BLANK	INTENTIONALLY LEFT BLANK
PX 24	SMG 0627, SMG 0622-0626, SMG 1088, SMG 1074, SMG 1073, SMG 1075, SMG 1085-1087, SMG 1081-1082, SMG 1076, SMG 1077-1078, SMG 1083, SMG 1079-1080, SMG 1084, SMG 1089, SMG 0979-0981, SMG 1156-1158, SMG 1090-1093, SMG 0972, SMG 0977, SMG 0978, SMG 0973-0976, SMG 1015, SMG 1020, SMG 1021-1025, SMG 0983, SMG 0984, SMG 0985, SMG 0986, SMG 0997, SMG 0987, SMG 0995, SMG 0996, SMG 0998-0999, SMG 1000-1001, SMG 1002, SMG 1005, SMG 1006, SMG 1007, SMG 1003-1004, SMG 1008-1009, SMG 1010-1011, SMG 1014, SMG 1013, SMG 0990-0991, SMG 1029-1030, SMG 0988-0989, SMG 1012, SMG 1026, SMG 1027, SMG 1046, SMG 1047-1049, SMG 1050, SMG 1051, SMG 1052, SMG 1053, SMG 1054, SMG 1055, SMG 1056-1059, SMG 1060, SMG 1034-1035, SMG 1062-1064, SMG 1065, SMG 1130, SMG 1069, SMG 1071, SMG 1070, SMG 1072, SMG 1114, SMG 1061, SMG 1066-1067, SMG 1068, SMG 1031-1032, SMG 1036, SMG 1033, SMG 1040, SMG 1037-1039, SMG 0994, SMG 0992, SMG 0993, SMG 1041, SMG 1042, SMG 1126-1127, SMG 1128-1129, SMG 1105-1106, SMG 1108-1109, SMG 1117, SMG 1107, SMG 1110, SMG 1148, SMG 1149-1150, SMG 1118-1120, SMG 1111, SMG 1112, SMG 1113, SMG 1133-1134, SMG 1115, SMG 1099, SMG 1100-1102, SMG 1103-1104,	Compendium of unsolicited faxes received by plaintiff Sherman Gottlieb from defendant Carnival

Exhibit No.	Bates No.	Description
	SMG 1124, SMG 1125, SMG 1121-1123, SMG 1131, SMG 1135-1136, SMG 1116, SMG 1141-144, SMG 1138, SMG 1145-1147, SMG 1137, SMG 1140, SMG 1096-1098, SMG 1132, SMG 1200-1201, SMG 1094-1095, SMG 1153-1155, SMG 1160-1161, SMG 1159, SMG 1139, SMG 1168-1170, SMG 1162-1163, SMG 1164, SMG 1202-1204, SMG 1165, SMG 1166-1167, SMG 1171, SMG 1172-1173, SMG 1174-1175, SMG 1176, SMG 1177-1178, SMG 1179, SMG 1180, SMG 1192, SMG 1181-1182, SMG 1190-1191, SMG 1183-1184, SMG 1185, SMG 1189, SMG 1186-1187, SMG 1188, SMG 1193-1194, SMG 1195-1197, SMG 1198-1199, SMG 1151-1152, SMG 0280-0281, SMG 0282, SMG 0283-0284, SMG 0285, SMG 0286-0287, SMG 0291, SMG 0288-0289, SMG 0290, SMG 0292, SMG 0293, SMG 0295, SMG 0294, SMG 0296, SMG 0297, SMG 0298, SMG 0316, SMG 0317, SMG 0314-0315, SMG 0313, SMG 0312, SMG 0311, SMG 0309, SMG 0310, SMG 0307-0308, SMG 0306, SMG 0304-0305, SMG 0303, SMG 0299, SMG 0300-0301, SMG 0302, SMG 0326, SMG 0329, SMG 0330, SMG 0328, SMG 0327, SMG 0322, SMG 0325, SMG 0319-0320, SMG 0323, SMG 0324, SMG 0318, SMG 0321, SMG 0335, SMG 0333, SMG 0334, SMG 0331, SMG 0337-0338, SMG 0332, SMG 0336, SMG 0633, SMG 0631, SMG 0632, SMG 0271, SMG 0634-0635, SMG 0636-0638, SMG 0630, SMG 0640, SMG 0641-0642, SMG 0639, SMG 0646, SMG 0647, SMG 0643, SMG 0645, SMG 0391, SMG 0392, SMG 0650, SMG 0648, SMG 0649, SMG 0652-0653, SMG 0656, SMG 0654, SMG 0655, SMG 0651, SMG 0343-0345, SMG 0341, SMG 0339, SMG 0340, SMG 0342, SMG 0346-0347, SMG 0348-0349, SMG 0602, SMG 0584, SMG 0585, SMG 0595, SMG 0594, SMG 0393-0396, SMG 0386-0387, SMG 0388-0389, SMG 0390, SMG 0373-0374, SMG 0375, SMG 0376, SMG 0377, SMG 0378, SMG 0379-0380, SMG 0603-0606, SMG 0353, SMG 0352, SMG 0350, SMG 0351, SMG 0596, SMG 0607-0610, SMG 0616, SMG 0611, SMG 0612-0615, SMG 0383-0385, SMG 0361,	

Exhibit No.	Bates No.	Description
	SMG 0362, SMG 0363, SMG 0364, SMG 0354-0357, SMG 0358, SMG 0381, SMG 0382, SMG 0091-0095, SMG 0371, SMG 0372, SMG 0598, SMG 0599, SMG 0600, SMG 0601, SMG 0617, SMG 0618, SMG 0359, SMG 0360, SMG 0365-0366, SMG 0367, SMG 0370, SMG 0621, SMG 0619, SMG 0620, SMG 0597, SMG 0628, SMG 0629, SMG 0586-0587, SMG 0590, SMG 0588, SMG 0589, SMG 0591, SMG 0592, SMG 0593, SMG 0478, SMG 0479, SMG 0496, SMG 0497, SMG 0498, SMG 0481, SMG 0480, SMG 0482, SMG 0494-0495, SMG 0493, SMG 0483-0484, SMG 0485, SMG 0499, SMG 0397, SMG 0486-0490, SMG 0405, SMG 0500, SMG 1016-1019, SMG 0398, SMG 0399, SMG 0406, SMG 0400, SMG 0401, SMG 0410-0411, SMG 0412-0414, SMG 0402-0404, SMG 0408, SMG 0409, SMG 0477, SMG 0407, SMG 0415-0416, SMG 0420, SMG 0928, SMG 0491, SMG 0492, SMG 0929, SMG 0930, SMG 0931, SMG 0932, SMG 0417-0419, SMG 0428-0429, SMG 0689, SMG 0933, SMG 0934, SMG 0426-0427, SMG 0690, SMG 0935, SMG 0438, SMG 0439, SMG 0440-0441, SMG 0436, SMG 0437, SMG 0430-0431, SMG 0566-0569, SMG 0432-0433, SMG 0434-0435, SMG 0464, SMG 0460-0463, SMG 0465, SMG 0466-0471, SMG 0472, SMG 0473-0476, SMG 0505-0507, SMG 0508-0510, SMG 0425, SMG 0501-0504, SMG 0421-0422, SMG 0423-0424, SMG 0559-0563, SMG 0564-0565, SMG 0511-0513, SMG 0514, SMG 0515-0517, SMG 0518-0522, SMG 0523-0524, SMG 0525-0531, SMG 0708, SMG 0712, SMG 0549-0551, SMG 0532-0538, SMG 0541-0546, SMG 0713, SMG 0706, SMG 0547-0548, SMG 0557, SMG 0558, SMG 0707, SMG 0552-0556, SMG 0936, SMG 0572-0573, SMG 0574-0578, SMG 0579-0583, SMG 0459, SMG 0457-0458, SMG 0658-0661, SMG 0937, SMG 0455-0456, SMG 0450-0454, SMG 0442-0447, SMG 0757-0758, SMG 0759-0762, SMG 0448, SMG 0449, SMG 0662-0665, SMG 0938, SMG 0695-0701, SMG 0279, SMG 0679, SMG 0742-0747, SMG 0276-0278, SMG 0272-0275, SMG 0710, SMG 0670, SMG 0939, SMG	

Exhibit No.	Bates No.	Description
	0666-0669, SMG 0691-0694, SMG 0714, SMG 0709, SMG 0940, SMG 0720-0725, SMG 0726-0730, SMG 731, SMG 0719, SMG 0941, SMG 0715-0718, SMG 0705, SMG 0683, SMG 0732-0736, SMG 0749, SMG 0748, SMG 0702-0704, SMG 0737-0741, SMG 0772-0774, SMG 0684, SMG 0680-0681, SMG 0682, SMG 0685, SMG 0763-0768, SMG 0943, SMG 0769-0771, SMG 0775, SMG 0942, SMG 0778-0780, SMG 0781-0787, SMG 0750, SMG 0788-0791, SMG 0776-0777, SMG 0686, SMG 0001-0006, SMG 0792-0793, SMG 0794-0795, SMG 0799, SMG 0800, SMG 0796-0798, SMG 0801-0804, SMG 0805-0806, SMG 0815, SMG 0816, SMG 0807-0810, SMG 0811-0814, SMG 0820-0823, SMG 0944, SMG 0817-0819, SMG 0824-0827, SMG 0831-0832, SMG 0945, SMG 0828-0830, SMG 0676-0678, SMG 0671-0675, SMG 0833-0834, SMG 0687-0688, SMG 0835, SMG 0644, SMG 0836-0838, SMG 0839-0841, SMG 0842-0845, SMG 0846-0848, SMG 0849-0853, SMG 0657, SMG 0854-0856, SMG 0857-0860, SMG 0874, SMG 0875, SMG 0946, SMG 0947, SMG 0865-0867, SMG 0871-0873, SMG 0861-0864, SMG 0948, SMG 0868-0870, SMG 0876-0879, SMG 0016-0019, SMG 0020-0020a, SMG 0101-106a, SMG 0949, SMG 0022-0026a, SMG 0061, SMG 0027-0028, SMG 0059-0060, SMG 0021, SMG 0045-0052, SMG 0007, SMG 0030-0033, SMG 0034-0044, SMG 0008-0015, SMG 0053-0054a, SMG 0029, SMG 0055-0058, SMG 0950, SMG 0062, SMG 0068-0069a, SMG 0063-0064a, SMG 0951-0952a, SMG 0065-0067a, SMG 0070-0070a, SMG 0096-0100a, SMG 0072-0077a, SMG 0071-0071a, SMG 0078-0080a, SMG 0960, SMG 0957, SMG 0081-0083a, SMG 0084-0088a, SMG 0089-0089a, SMG 0090, SMG 0959, SMG 0958, SMG 0107-0112a, SMG 0113-0117a, SMG 0145-0145a, SMG 0956-0956a, SMG 0267-0270a, SMG 0128-0128a, SMG 0129-0129a, SMG 0130-0133a, SMG 0954-0954a, SMG 0953-0953a, SMG 0118-0127a, SMG 0150-0153a, SMG 0137-0137a, SMG 0138-0138a, SMG 0955-0955a, SMG 0134-0136a, SMG 0160-0161a, SMG 0154-0156a, SMG 157-157a, SMG	

Exhibit No.	Bates No.	Description
	0158-0159, SMG 0162-0166a, SMG 0167-0168, SMG 0169-0172, SMG 0173-0176, SMG 0177, SMG 0178-0181, SMG 0148, SMG 149, SMG 0146-0147, SMG 0201-0202, SMG 0192-0193, SMG 0196-0200, SMG 0188-0191a, SMG 0182-0186, SMG 0195-195a, SMG 0203-0204a, SMG 0205-0212a, SMG 213, SMG 0214-0219a, SMG 0187, SMG 0246, SMG 0194-0194a, SMG 0220-0222a, SMG 0232-0232a, 0233-0238a, SMG 0223-0226a, SMG 0258-0258a, SMG 0227-0231a, SMG 0239-0245a, SMG 0247, SMG 0248-0251a, SMG 0252-0257, SMG 0259-0259a, SMG 0260-0266, SMG 0139-0144, SMG 0965, SMG 0966, SMG 0967, SMG 0968, SMG 0969, SMG 0970, SMG 0880-0886a, SMG 0887-0895a, SMG 0896-0903a, SMG 0904-0911a, SMG 0711, SMG 0912-0919a, SMG 0920-0927a, SMG 0961, SMG 0962-0964, SMG 0368-0369, SMG 0539, SMG 0540, SMG 0570-0571, SMG 1028, SMG 1043-1045	
PX25	SMG 0532-0538	Sample fax, dated June 9, 2002 from Carnival

Defendant's Trial Exhibits:

Exhibit No.	Bates No.	Description
DX 1		Stipulation, dated July 2, 2009
DX 2	CARN 000001	
DX 3	CARN 000002	
DX 4	CARN 000003	
DX 5	CARN 000004-5	
DX 6	CARN 000006-7	
DX 7	CARN 000008-9	
DX 8	CARN 000010	
DX 9	CARN 000012-17	
DX 10		N.Y. Secretary of State Dissolution Record of Michael Sherman Inc.

III. Witness lists, including names and addresses of all witnesses, together with a brief narrative of the expected testimony of each witness:

a. Sherman Mr. Gottlieb, 688 Harris Avenue, Staten Island, New York 10314.

Mr. Gottlieb is the plaintiff in this action. It is anticipated that Mr. Gottlieb will testify as follows:

Plaintiff Sherman Mr. Gottlieb is a retired New York City public school teacher who worked as a travel agent from his home in Staten Island. In connection with that line of work, he utilized a fax machine. Beginning in or about 2000, Mr. Gottlieb received literally thousands of unwanted or unsolicited faxes, often referred to as junk faxes.

On several occasions in late 2000 and early 2001, Mr. Gottlieb contacted Carnival and spoke to their representatives on the telephone and informed them that he did not wish to receive promotional faxes and that his fax number should be removed from Carnival's fax list. At or about the same time, Mr. Gottlieb also sent written requests to Carnival to cease sending him promotional faxes. These written requests were either in the form of a letter to Carnival asking it to stop faxing him or Mr. Gottlieb would simply take an unsolicited fax, write "DO NOT FAX" (or words to that effect) on it and fax it back to Carnival.

Mr. Gottlieb eventually came to learn that Congress had enacted a law – the Telephone Consumer Protection Act of 1991 – which addressed the evils of junk faxes.

In late 2002, Mr. Gottlieb sought legal advice from Louis Mauriello (an attorney whom Mr. Gottlieb had used in the past) about commencing actions under the TCPA against various junk fax offenders.

In January 2003, Mr. Gottlieb gave Mr. Mauriello his original file of unsolicited faxes which included hundreds of faxes that Mr. Gottlieb received from Carnival between 2000 and 2003. Mr. Gottlieb assumed that Mr. Mauriello would safeguard this file and thus Mr. Gottlieb

did not keep copies of those faxes. Together with those faxes, Mr. Gottlieb also provided Mr. Mauriello several letters and faxes that Mr. Gottlieb sent to Carnival requesting that it cease sending him unsolicited faxes. Unfortunately, Mr. Mauriello negligently lost all of the documents that Mr. Gottlieb gave him in January 2003. Mr. Gottlieb complained about this negligence to the local bar association, and contacted new attorneys to pursue his rights.

Prior to 2004, Mr. Gottlieb only booked one Carnival cruise, except he did not book that cruise directly with Carnival. Instead, he booked the cruise through Cruise Value Center, which is a cruise consolidator. Cruise consolidators purchase large blocks of cabins at a discount from cruise operators (such as Carnival) and then re-sell them to travel agents and to members of the public. Any commission that Mr. Gottlieb earned from that cruise was paid by Cruise Value Center, not by Carnival. Further, in connection with that cruise, Mr. Gottlieb did not have any communications directly with Carnival concerning booking that reservation.

The only cruise that Mr. Gottlieb ever booked directly with Carnival was in February 2004. However, within days of making that reservation, that cruise was cancelled because his client ultimately opted not to go on the cruise. He was required to, and did, return the commission payment. As such, from 1999 to 2007, Mr. Gottlieb never profited from any transaction with Carnival. In any event, the faxes at issue all pre-date February 2004.

At no point in time did Mr. Gottlieb ever authorize Carnival orally or in writing to send him promotional or junk faxes.

b. Louis Mauriello, Esq., 94 Radcliff Road, Staten Island, New York 10305.

Mr. Mauriello is a non-party to this action. It is anticipated that Mr. Mauriello will testify as follows:

Prior to 2003, Mr. Mauriello handled several matters for both Mr. Gottlieb and members of his immediate family. In or about January, 2003, Mr. Gottlieb met with Mr. Mauriello to discuss commencing one or more lawsuits under the TCPA. While Mr. Mauriello does not recall whether he received Mr. Gottlieb's faxes during the January 2003 meeting or thereafter, Mr. Mauriello admits that Mr. Gottlieb did hand him a file which included faxes that Mr. Gottlieb had received from various companies.

Mr. Mauriello recalls reviewing the file at a later time in his office, but does not recall what faxes or letters were in the file. Mr. Mauriello cannot dispute that among the papers given to him by Mr. Gottlieb were letters and/or faxes from Mr. Gottlieb to Carnival requesting that it cease faxing him.

Subsequent to the January 2003 meeting, approximately five months elapsed and Mr. Gottlieb had not heard anything from Mr. Mauriello, despite several telephone calls by Mr. Gottlieb.

Mr. Gottlieb was finally able to reach Mr. Mauriello by telephone in June 2003. Mr. Mauriello admits that, during the call, he assured Mr. Gottlieb that he was handling the matter; that he intended to send letters to the fax violators; and that if the fax violators refused to settle, Mr. Mauriello intended to file lawsuits. This never happened, however, because, as Mr. Mauriello admits, he negligently lost Mr. Gottlieb's entire file.

Mr. Mauriello admitted that once he realized that Mr. Gottlieb's file had been lost, he began "ducking" Mr. Gottlieb's telephone calls.

Eventually, Mr. Gottlieb filed a complaint with the Richmond County Bar Association. In response, Mr. Mauriello admitted that he had lost Mr. Gottlieb's file.

c. Frederick Stein.

Fred Stein is Senior Director, Sales Administration, for Carnival. Mr. Stein is expected to testify regarding his background with Carnival, and Carnival's policies and practices during the relevant time period with respect to registration of Carnival travel agents, agent commissions, communications between Carnival and its registered agents, the relationship between Carnival and its registered agents, and the faxing of promotional flyers to registered agents.

Mr. Stein will also testify with respect to Carnival's computer records regarding its registered agent, SMG Travel, the trade name by which Plaintiff conducts his travel agency business, including but not limited to the initial registration of SMG Travel as a Carnival travel agent, bookings or attempted bookings of cruises, placement of SMG Travel on inactive status in April 2003, and the cessation at that time of the faxing of promotional flyers to SMG Travel, as well as Plaintiff's February 5, 2004 booking of a cruise for one of his customers, and his reactivation of SMG Travel's status as an active registered agent.

Mr. Stein will testify further regarding Carnival's policies and practices with respect to, and internal system processing of, travel agent requests, whether oral or written, that Carnival stop sending the promotional faxes. Mr. Stein will also testify with respect to the lack of any Carnival record of any oral or written request from Plaintiff that Carnival stop sending SMG Travel the promotional flyers.¹

¹ For the reasons set forth in plaintiff Sherman Gottlieb's motion in limine, Mr. Gottlieb does not agree that Mr. Stein is competent to testify as to all of the matters above.

IV. Expert Witnesses:

None.

V. Hearsay Evidence:

a. Material to be relied upon pursuant to Federal Rules of Evidence 803(18):

None.


b. Notice pursuant to Federal Rules of Evidence, Rules 803(24) and

804(b)(5): None.

Dated: New York, New York
March 1, 2010

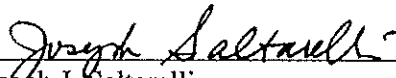
Respectfully Submitted,

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